

Serial No.: 10/743,858

## REMARKS

### Status Summary

Claims 1-37 are pending in the present application. Claims 1-16 have been allowed, and claims 17-20, 26-34, 36, and 37 presently stand rejected. Claims 10, 16, 21-25, and 35 stand objected to. Claims 1, 10, 16, 21, and 35 have been amended. No new matter has been introduced by the present amendment. Reconsideration of the application as amended and based on the remarks set forth hereinbelow are respectfully requested.

### Specification

The Abstract of the Disclosure stands objected to because the term "domination" at line 4 should be "denomination". The Abstract has been amended to replace "domination" at line 4 with "denomination" as suggested by the Examiner.

The Disclosure stands objected to because of informalities. The Examiner suggests replacing the term "domination" at page 6, line 24, with "denomination". The specification has been amended in accordance with the Examiner's suggestion.

Further, the term "MSM 306" at page 9, line 19, should be changed to "switch management module (SMM) 306". The term "MSM" has been replaced with "SMM," which is defined above in the specification as an acronym for "switch management module". Applicants respectfully submit that an appropriate correction has been made to the term.

Serial No.: 10/743,858

Accordingly, for the reasons set forth above, applicants respectfully submit that the objections to the specification should be withdrawn.

#### Claim Objections

Claim 10 stands objected to because the term "token minimum token" at line 2 should be "minimum token". The claim has been amended as suggested by the Examiner.

Claim 16 stands objected to because "the relative time" at line 4 should be "a relative time". The claim has been amended as suggested by the Examiner.

Accordingly, for the reasons set forth above, applicants respectfully submit that the objections to claims 10 and 16 should be withdrawn.

#### Claim Rejection - 35 U.S.C. § 103

Claims 17-20, 26, 27, 29-34, and 36 stand rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,570,847 to Hosein (hereinafter, "Hosein") in view of Applicants' Admitted Prior Art ("AAPA"). Further, claims 28 and 37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hosein in view of AAPA and further in view of U.S. Patent No. 5,926,459 to Lyles et al. (hereinafter, "Lyles"). These rejections are respectfully traversed.

Independent claim 17 recites a method for allocating bandwidth to a queue in a switch. Further, claim 17 recites receiving, from a user, a desired bandwidth in a standard bandwidth denomination to be provided by a switch. For example, the user

Serial No.: 10/743,858

may specify bandwidth in any suitable standard bandwidth domination, such as kilobits per second. The user may specify a single bandwidth value to be allocated to a queue or minimum and maximum bandwidth values. (See page 12, lines 7-16, of the subject application). Claim 17 also recites automatically converting the desired bandwidth to a token bucket refresh rate. Further, claim 17 recites refreshing at least one token bucket associated with the switch at the token bucket refresh rate. Claim 17 also recites scheduling at least one queue in the switch to be serviced based on available tokens in the token bucket.

Hosein is directed to regulating network traffic levels. The Examiner contends that Hosein teaches the features of claim 17 except for the feature of receiving, from a user, a desired bandwidth in a standard bandwidth denomination to be provided by a switch. Applicants agree. Further, Hosein fails to suggest this feature.

AAPA also fails to disclose or suggest the feature of receiving, from a user, a desired bandwidth in a standard bandwidth denomination to be provided by a switch. The Examiner references the Background section of the subject application as applicants' admission that the feature of an end user of a switched network element specifying bandwidth "where it is implicit that this permits an end user to obtain a particular data rate" would have been known to one of ordinary skill in the art at the time of the invention. In particular, the Examiner states that the statement "an end user of a switched network element may desire to specify bandwidth in standard denominations" at page 5, lines 11-13, of the Background section is admitted prior art. Applicants respectfully disagree.

Serial No.: 10/743,858

Applicants respectfully submit that the Examiner has erred in interpreting the extent of what is admitted prior art appearing in the Background section of the subject specification. Referring to the same paragraph in the Background section referenced by the Examiner, applicants suggest improvements over the known prior art. For example, applicants suggest at page 5, lines 7-9, that it is desirable to control the token bucket refresh rate in order to provide the desired bandwidth. Further, at the sentence at page 5, lines 11-13 referenced by the Examiner, applicants suggest that an end user may desire to specify bandwidth in standard denominations. In the following sentence, applicants state that current literature on token buckets likewise does not specify how to convert standard bandwidth denominations into token bucket refresh rates. Applicants respectfully submit that there is no basis for the Examiner's conclusion that applicants' discussion of an end user desiring to specify bandwidth in standard denominations is part of the admitted prior art. To the contrary, the statements in the Background section alleged to be admission of prior art by the Examiner, are in fact applicants' own analysis of problems existing in the prior art and a suggestion to a solution to such problems. These statements are in compliance with suggestions for inclusion in the "Background of the Invention" portion of a patent application appearing at section 608.01(c)(2) of the MPEP. Accordingly, applicants respectfully submit that the Examiner has provided no prior art disclosure of the feature of receiving, from a user, a desired bandwidth in a standard bandwidth denomination to be provided by a switch, nor any recognition for a need for this feature other than in applicants' own disclosure. Thus, any attempt to combine the

Serial No.: 10/743,858

teachings of Hosein could not come from any teaching or suggestion in the prior art but, rather, only from applicants' own disclosure.

Accordingly, for the reasons set forth above, applicants respectfully submit that the rejection of claim 17 and its dependent claims 18-20, 26, and 27 under 35 U.S.C. § 103(a) should be withdrawn and the claims allowed.

Claim 29 recites features similar to claim 17. In particular, claim 29 recites a user interface operatively associated with the switched network element for receiving input from a user regarding a desired bandwidth to be provided by the switched network element. Accordingly, for the reasons set forth above with respect to claim 17, applicants respectfully submit that the rejection of claim 29 and its dependent claims 30-34 and 36 under 35 U.S.C. § 103(a) should be withdrawn and the claims allowed.

Claim 28 depends upon claim 17. Therefore, claim 28 includes the features recited by claim 17. For the reasons set forth above, Hosein and AAPA, either alone or in combination, fail to disclose or suggest each and every feature recited by claim 28. Lyles fails to overcome the shortcomings of Hosein and AAPA. Lyles is directed to a network traffic rate shaper in a packet switched communications system. Among other features of claim 17, Lyles fails to disclose or suggest the claim 17 feature of receiving, from a user, a desired bandwidth in a standard bandwidth denomination to be provided by a switch. Accordingly, applicants respectfully submit that the rejection of claim 28 under 35 U.S.C. § 103(a) should be withdrawn and the claim allowed.

Serial No.: 10/743,858

Claim 37 depends upon claim 29. Therefore, claim 37 includes the features recited by claim 29. Claim 29 recites features similar to claim 17. For the reasons set forth above, it is respectfully submitted that Hosein, AAPA, and Lyles, either alone or in combination, fail to disclose or suggest each and every feature recited by claim 37. Accordingly, applicants respectfully submit that the rejection of claim 37 under 35 U.S.C. § 103(a) should be withdrawn and the claim allowed.

Allowable Subject Matter

The Examiner indicates that claims 1-16 are allowed. Applicants sincerely appreciate the allowance of these claims. A clarifying amendment has been made to claim 1 to correct an antecedent basis error.

Further, the Examiner indicates that claims 21-25 and 35 stand objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the features of the base claim and any intervening claims. Claim 21 has been amended to include the feature of parent claim 17. Therefore, it is respectfully submitted that claim 21 and its dependent claims 22-25 should be allowed.

Claim 35 has been amended to include the features of parent claim 29. Therefore, it is respectfully submitted that claim 35 should be allowed.

Serial No.: 10/743,858

CONCLUSION

In light of the above Amendments and Remarks, it is respectfully submitted that the present application is now in proper condition for allowance, and an early notice to such effect is earnestly solicited.

If any small matter should remain outstanding after the Patent Examiner has had an opportunity to review the above Remarks, the Patent Examiner is respectfully requested to telephone the undersigned patent attorney in order to resolve these matters and avoid the issuance of another Official Action.

DEPOSIT ACCOUNT

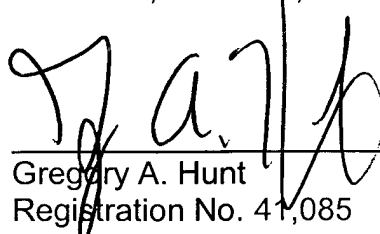
A check in the amount of \$420.00 is enclosed. However, the Commissioner is hereby authorized to charge any deficiencies of payment or credit any overpayment associated with the filing of this correspondence to Deposit Account No. 50-0426.

Respectfully submitted,

JENKINS, WILSON, TAYLOR & HUNT, P.A.

Date: November 30, 2007

By: \_\_\_\_\_

  
Gregory A. Hunt  
Registration No. 41,085  
Customer No. 25297

1427/8

GAH/BJO